

**Preliminary Request for Amendment  
and Amendment Determination  
Request  
Boardman Solar Energy Facility**

**Prepared for  
Boardman Solar Energy LLC**

**Prepared by**

**Invenergy**

**Invenergy LLC**

**December 15, 2020**

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## 1.0 Introduction

Boardman Solar Energy Facility (or Facility) is an approved, but not yet constructed, renewable energy project that includes a solar photovoltaic power generation facility and supporting facilities. It will be comprised of 30 module blocks and will have approximately 75 megawatts (MW) of nominal and average electric generating capacity. The energy facility and its related and supporting facilities will be located within Morrow and Gilliam counties. The site boundary, as defined in OAR 345-001-0010, encompasses approximately 798 acres of private land and includes the perimeter of the energy facility site, its related and supporting facilities, all temporary laydown and staging areas and the transmission line corridor proposed by the Certificate Holder Boardman Solar Energy LLC (Certificate Holder), as approved by the Oregon Energy Facility Siting Council (EFSC, also referred to herein as Council).

The facility components include the solar module blocks; underground electrical collection system; substation, control house and generator step-up transformer; 115-kV transmission line, private service road, and point of interconnection (POI); operations and maintenance (O&M) building; private access road, service roads, gates, and security fence; and additional temporary construction areas. All facility components (with the exception of the transmission line, transmission line service road, and POI) will be located in Morrow County, Oregon.

### 1.1 Purpose of Proposed Amendment Request

This amendment request is submitted pursuant to Oregon Administrative Record (OAR) 345-027- 0385, and seeks to extend the deadlines for beginning and completing construction of the facility. This amendment request also includes a request for a written determination that the amendment request justifies review under the type B review process described in OAR 345-027-0351(3).

Because the site certificate for the Project was issued after October 24, 2017, in accordance with Section (5), Sections (3) and (4) of OAR 345-027-0385 apply. According to Section (3)(a), the Council may specify new deadlines for beginning or completing construction which would be the later of: three years from the deadlines in effect, or two years in a contested case conducted pursuant to OAR 345-027-0371.

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Therefore, this amendment request has been prepared pursuant to OAR 345-027-0350(3) and OAR 345-027-0360(1). Sections 2 through 6 of this amendment request address the applicable Energy Facilities Siting Council (standards for the amendments to the site certificate.

This amendment request also includes the information required by 345-027-0357:

*(2) For a proposed change that would not add area to the site boundary, the certificate holder may submit an amendment determination request to the Department for a written determination of whether:*

*(a) The proposed change requires an amendment under OAR 345-027-0350; or*

*(3) For any request for amendment described under OAR 345-027-0350(3) or (4), the certificate holder may submit an amendment determination request to the Department for a written determination of whether a request for amendment justifies review under the type B review process described in OAR 345-027-0351(3).*

Response: As part of the amendment request, the certificate holder is seeking a determination of whether this request for amendment justifies review under the type B review process. See justification for type B review in (8)(a)-(e).

*(4) Requests described in section (1), (2), and (3) must be submitted in writing to the Department and must include:*

*(a) A narrative description of the proposed change.*

Response: See Sections 1.2 and 3.0 of this amendment request.

*(b) Maps and/or geospatial data layers representing the effects and/or location of the proposed change.*

Response: There are no changes to geospatial data previously provided, and therefore, no new maps or geospatial data layers are submitted with this request.

*(c) The certificate holder's evaluation of the determination(s) it is requesting under sections (1), (2), and (3).*

Response: In accordance with section (3), the certificate holder requests that the Department review this amendment under the Type B review process. See justification in (8)(a)-(e).

*(d) Any additional information the certificate holder believes will assist the Department's evaluation.*

Response: A detailed analysis of how the Project continues to comply with relevant standards is provided in Sections 2 through 6 of this amendment request.

*(8) In determining whether a request for amendment justifies review under the type B review process described in OAR 345-027-0351(3), the Department and the Council may consider factors including, but not limited to:*

*(a) The complexity of the proposed change;*

Response: This request only seeks to extend the construction deadlines. There will be no physical alterations to the approved facility. The facility will be constructed and operated in the same manner as previously approved by the Council.

*(b) The anticipated level of public interest in the proposed change;*

Response: The surrounding public has previously signaled their support for the proposed project. During the public comment periods on the initial Application for Site Certificate (ASC), there were only eight comments made, with the majority being supportive of the project. Moreover, all comments raised by interested parties and reviewing agencies were addressed, and conditions were added to ensure compliance with council standards. The Council provided the opportunity for a contested case public hearing and there were no requests for party status. Because there was no significant public opposition to the project as originally proposed, and there will be no physical alterations, we do not anticipate there will be a significant amount of public interest in the proposed change.

*(c) The anticipated level of interest by reviewing agencies;*

Response: Reviewing agencies were involved in the public process for the ASC. The iterations in that process allowed the Certificate Holder to determine the appropriate path to move the project forward while complying with varying regulations and standards. The Certificate Holder understands that the ODOE review process includes outreach to

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reviewing agencies as a matter of process, but we anticipate that interest in the proposed site certificate change will be low in comparison to other EFSC-jurisdictional projects. Because there will be no physical changes to the approved site certificate and applicable conditions, we do not expect significant renewed interest by reviewing agencies.

*(d) The likelihood of significant adverse impact; and*

Response: There will be no additional impacts that were not accounted for in the ASC process. Conditions were put in place then to ensure that any impacts would be mitigated over the life cycle of the facility.

*(e) The type and amount of mitigation, if any*

Response: Mitigation efforts were described by the certificate holder in the ASC. Multiple conditions were also put in place on the approved site certificate to ensure that mitigation efforts would be conducted with oversight and accountability over the lifetime of the project. The Certificate Holder remains committed to adhering to the agreed upon mitigation efforts and conditions.

## **1.2 Summary of Modifications**

As described above, this amendment request seeks Council approval of a 3-year extension of the construction start and construction completion deadlines. This request does not seek to modify the existing site boundary, physical components of the Project, number of modules, or maximum generating capacity of the Project. The Certificate Holder requests council approval of an extension of site certificate construction deadlines in order to allow the Project to complete development, including obtaining a power purchase agreement, financing, and construction under the requested timeline.

## **2.0 Certificate Holder Information (OAR 345-027-0360(1)(a))**

*(1) To request an amendment to the site certificate required by OARs 345-027-0350(3) and (4), the certificate holder shall submit a written preliminary request for amendment to the Department of Energy that includes the following:*

*(a) The name of the facility, the name and mailing address of the certificate holder, and the name, mailing address, email address and phone number of the individual responsible for submitting the request.*

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**2.1 Name of Facility**

Boardman Solar Energy Facility

**2.2 Name and Mailing Address of the Certificate Holder**

Boardman Solar Energy LLC  
c/o Invenergy Solar Development LLC  
One South Wacker Drive, Suite 1800  
Chicago, IL 60606

**2.3 Name and Mailing Address of Individuals Responsible for Submitting the Request**

Zach Lea  
Boardman Solar Energy LLC  
c/o Invenergy Solar Development LLC  
959 SE Division Street, Suite 350  
Portland, OR 97214  
zlea@invenergy.com  
(971) 346-4984

James Williams  
Boardman Solar Energy LLC  
c/o Invenergy Solar Development LLC  
140117<sup>th</sup> St. Suite 1100, Denver, CO 80202  
jwilliams@invenergy.com  
(303) 557-4488

**3.0 Detailed Description of the Proposed Change (OAR 345-027-0360(1)(b))**

*(b) A detailed description of the proposed change, including:*

*(A) a description of how the proposed change affects the facility,*

Response: This request does not change any of the Project facilities as described in the Site Certificate. It only seeks to extend the Project construction start deadline from February 23, 2021 to February 23, 2024; and to change the deadline for construction

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completion from February 23, 2024 to February 23, 2027. This is consistent with the allowable extensions under OAR 345-027-0385(3).

**3.1 Applicable Laws and Council Rules (OAR 345-027-0360(1)(b)(B))**

*(B) a description of how the proposed change affects those resources or interests protected by applicable laws and Council standards, and*

Response: Section 5 below demonstrates how the proposed extension complies with applicable laws and Council standards.

**3.2 Location of the Proposed Change (OAR 345-027-0360(1)(b)(C))**

*(C) the specific location of the proposed change, and any updated maps and/or geospatial data layers relevant to the proposed change.*

Response: The Facility is a Council-approved solar photovoltaic power generation facility and along with supporting facilities. It will be comprised of 30 module blocks and will have approximately 75 megawatts (MW) of nominal and average electric generating capacity. This request does not change the Facility site boundary or the location of any associated project facilities, and therefore, no updates to maps and/or geospatial data layers are needed. This request only seeks to extend the construction start and completion deadlines for the Facility. For reference, a map of the current approved site boundary and the existing tax lots is provided as Figure F-1 (figures are provided at the end of this amendment request before the attachments).

**4.0 Division 21 Requirements – OAR 345-027-0360(1)(c)**

*(c) References to any specific Division 21 information that may be required for the Department to make its findings;*

Response: As described further below under the applicable Division 22 standards, the extension of the construction start, and construction completion deadlines will not change any of the evidence or analysis provided in the original ASC. Accordingly, there is no Division 21 information necessary for the Department to make its findings.

## 5.0 Site Certificate Revisions (OAR 345-027-0360(1)(d))

*(d) The specific language of the site certificate, including conditions, that the certificate holder proposes to change, add, or delete through the amendment;*

Response: This request aims to change the specific language in condition number GEN-GS-01:

“a) Facility construction shall commence ~~within three years after the site certificate is executed by the Council Chair-~~ by February 23, 2024. . Within 7 days of construction commencement, the certificate holder shall provide the Department written verification that it has met the construction commencement deadline. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. b) Construction of all facility components shall be completed ~~within three years after construction commencement~~ by February 23, 2027. Within 7 days of construction completion, the certificate holder shall provide the Department written verification that it has met the construction completion deadline.”

## 6.0 Council Standards and Laws Applicable to the Proposed Change (OAR 345-027-0360(1)(e))

*(e) A list of all Council standards and other laws, including statutes, rules and ordinances, applicable to the proposed change, and an analysis of whether the facility, with the proposed change, would comply with those applicable laws and Council standards. For the purpose of this rule, a law or Council standard is “applicable” if the Council would apply or consider the law or Council standard under OAR 345-027-0375(2);*

Response: The relevant Council standards to the proposed change include OAR 345 Division 22 (General Standards for Siting Facilities) and Division 24 (Specific Standards for Siting Facilities). The Facility is an electricity generating project using photovoltaic technology. Therefore, Division 23, which applies to non-generating facilities, does not apply. Similarly, inapplicable provisions of Division 24 (i.e., standards applicable to gas

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plants, gas storage, non-generating facilities, etc.) are not discussed. The sections below present a list of applicable Council standards and other laws along with an analysis of how the facility, with the proposed extension, continues to comply with the laws and standards.

## **6.1 Applicable Division 22 Standards**

### **6.1.1 General Standard of Review (OAR 345-022-0000)**

*(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:*

*(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet as described in section (2);*

*(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.*

Response: The sections below demonstrate that Boardman Solar Energy continues to comply with the requirements of the siting statutes and the standards adopted by the Council, and demonstrate how Boardman Solar Energy Facility complies with relevant Oregon statutes and administrative rules including those identified in the Project Order.

**6.1.2 Organizational Expertise (OAR 345-022-0010)**

*(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.*

*(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.*

*(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.*

*(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate*

*subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.*

Response: EFSC previously found that the Project complies with the Organizational Expertise standard, and there is no proposed change to the certificate holder's organizational expertise. The Certificate Holder (Boardman Solar Energy LLC), a wholly owned subsidiary of Invenergy Solar Development LLC, relies upon the organizational expertise of its parent company, Invenergy LLC (Invenergy). Based on the extensive experience of the parent company, the Council previously found that the Certificate Holder has demonstrated the ability to design, construct and operate the facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Certificate Holder remains committed to maintaining compliance with the Organization Expertise conditions included in the existing site certificate, including requiring all contractors and subcontractors to comply with all applicable laws and regulations and terms and conditions of the site certificate.

**6.1.3 Structural Standard (OAR 345-022-0020)**

*(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:*

*(a) The applicant, through appropriate site-specific study, has adequately characterized the seismic hazard risk of the site; and*

*(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site, as identified in subsection (1)(a);*

*(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and*

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*(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by the hazards identified in subsection (c).*

*(2) The Council may not impose the Structural Standard in section (1) to approve or deny an application for an energy facility that would produce power from wind, solar or geothermal energy. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

*(3) The Council may not impose the Structural Standard in section (1) to deny an application for a special criteria facility under OAR 345-015-0310. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

Response: EFSC previously found that the Project complies with the Structural Standard. As explained in the Final Order on the ASC, the Council found that the Certificate Holder had adequately characterized the potential geologic and soil hazards of the facility site, and that the Certificate Holder can design, engineer, and construct the facility to avoid dangers to human safety and the environment presented by the identified hazards. The proposed change does not affect the certificate holder's ability to design, engineer, and construct the Project to avoid dangers to human safety and the environment. The Certificate Holder will maintain compliance with the Structural Standard conditions listed in the existing site certificate, including conducting subsurface evaluations to characterize the soils within the Facility site and use the resulting data to plan and design appropriate mitigation measures.

#### **6.1.4 Soil Protection (OAR 345-022-0022)**

*To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.*

Response: In Exhibit I of the ASC, the Applicant described existing soil conditions of the project site. They also completed an assessment of how the facility may impact soils. They went on to describe measures to mitigate potential adverse impacts and described a monitoring program to be put in place. Based on that information, and subject to compliance with site certificate conditions, the Council found that the Applicant would comply with the Soil Protection standard. The proposed change will not affect the certificate holder's ability to comply with the Soil Protection standard. The certificate holder will maintain compliance with all Soil Protection Standard conditions.

**6.1.5 Land Use (OAR 345-022-0030)**

*(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.*

*(2) The Council shall find that a proposed facility complies with section (1) if:*

*(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or*

*(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:*

*(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);*

*(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or*

*(B) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).*

Response: Based on the evidence submitted for the record in the ASC and subject to compliance with the specified conditions, the Council found that an exception to Goal 3 is justified under OAR 345-022- 34 0030(4)(c) and ORS 469.504(2)(c); and that the facility complies with OAR 660-033-0130(38)(f) and complies with the applicable statewide planning goal (Goal 3). As such, subject to the conditions, the Council found that the facility complies with the Council's Land Use standard. The proposed change does not affect EFSC's previous findings of compliance with the Land Use Standard. There have been no changes in local codes or regulations that would change the analysis completed in the ASC. There are no substantive changes proposed to the development of or use at the Facility site. Accordingly, EFSC may rely on its earlier findings that the Facility complies with the Council's Land Use Standard.

#### **6.1.6 Protected Areas (OAR 345-022-0040)**

*(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:*

*(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;*

*(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;*



*(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;*

*(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;*

*(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;*

*(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;*

*(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;*

*(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;*

*(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;*

*(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR chapter 142;*

*(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;*

*(l) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;*

*(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to: Coastal Oregon Marine Experiment Station, Astoria. Mid-Columbia Agriculture Research and Extension Center, Hood River. Agriculture Research and Extension Center, Hermiston. Columbia Basin Agriculture Research Center, Pendleton. Columbia Basin Agriculture Research Center, Moro. North Willamette Research and Extension Center, Aurora. East Oregon Agriculture Research Center, Union. Malheur Experiment Station, Ontario. Eastern Oregon Agriculture Research Center, Burns. Eastern Oregon Agriculture Research Center, Squaw Butte. Central Oregon Experiment Station, Madras. Central Oregon Experiment Station, Powell Butte. Central Oregon Experiment Station, Redmond. Central Station, Corvallis. Coastal Oregon Marine Experiment Station, Newport. Southern Oregon Experiment Station, Medford. Klamath Experiment Station, Klamath Falls.*

*(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;*

*(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;*

*(p) State wildlife areas and management areas identified in OAR chapter 635, division 8.*

Response: Considering the analysis presented by the Applicant in the ASC in Exhibit L, the Council previously found that, subject to compliance with the certificate conditions and taking in to account mitigation, the design, construction and operation of the facility would not be likely to result in significant adverse impacts to any protected areas, and therefore is in compliance with the Council's Protected Area standard. The proposed

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change does not affect EFSC's previous findings of compliance with the Land Use Standard. There have been no additional protected areas added that warrant consideration beyond what the Council analyzed in the ASC. There are no substantive changes proposed to the development of or use at the Facility site. Accordingly, EFSC may rely on its earlier findings that the Project complies with the Council's Protected Areas Standard.

**6.1.7 Retirement and Financial Assurance (OAR 345-022-0050)**

*To issue a site certificate, the Council must find that:*

*(1) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.*

*(2) The applicant has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition.*

Response: Subject to compliance with Retirement and Financial Assurance Conditions 1, 2, and 3, specified in the approved site certificate, the Council found that the facility could be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility. Subject to compliance with Retirement and Financial Assurance Condition 4, the Council finds that the certificate holder has a reasonable likelihood of obtaining a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. Therefore, the facility would comply with the Council's Retirement and Financial Assurance standard. The proposed change does not affect EFSC's previous findings of compliance with the Financial Assurance Standard. Accordingly, EFSC may rely on its earlier findings that the Project complies with the Council's Financial Assurance Standard, including maintaining a bond that takes into account the final design of the facility.

**6.1.8 Fish and Wildlife Habitat (OAR 345-022-0060)**

*To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:*

*(1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24, 2017, and*

*(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of February 24, 2017.*

Response: Based on the Applicant's analysis and representations, and on review of the information provided in Exhibit P of the ASC, subject to compliance with the site certificate conditions, the Council previously found that the design, construction, and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 345-415-0025. Following the site conditions is essential for the facility to remain in compliance with the Council's Fish and Wildlife Habitat standard. While habitat conditions may have changed since the initial site certificate application, the stipulated conditions require the applicant to perform updated analyses prior to commencing construction. These conditions will ensure continued compliance with this Fish and Wildlife Habitat Standard.

**6.1.9 Threatened and Endangered Species (OAR 345-022-0070)**

*To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:*

*(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:*

*(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or*

*(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and*

*(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.*

Response: As described in the final order and the ASC, the field surveys and historical data demonstrated a lack of listed plant species within the site boundary. While the existing habitat is of relatively low quality (Category 4), the Applicant stated that the site boundary contains potential habitat for Lawrence's milkvetch. Subject to compliance with the adopted condition, based on the analysis presented here and the information in the record, the Council found that the facility is unlikely to adversely affect Lawrence's milkvetch or any other threatened or endangered plant species, and that the design, construction, and operation of the facility are not likely to cause a significant reduction in the likelihood of survival or recovery of threatened or endangered plant species. Prior to commencing construction, the Certificate Holder will perform field surveys within the site boundary for state-listed threatened and endangered species. This will ensure compliance with the Council's Threatened and Endangered Species standard.

**6.1.10 Scenic Resources (OAR 345-022-0080)**

*(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.*

*(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

Response: Based on the analysis provided by the applicant in the ASC, which included the visual features of the facility and a visual impact assessment, the Council found that the design, construction, and operation of the facility are not likely to result in significant

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adverse impacts to any identified scenic resources and values. Therefore, the facility complies with the Council's Scenic Resources standard. The proposed change does not affect EFSC's previous findings of compliance with the Scenic Resources Standard. There have been no additional scenic resources added to local plans that warrant consideration beyond what the Council analyzed in the ASC. Accordingly, EFSC may rely on its earlier findings of compliance with the Scenic Resources Standard.

**6.1.11 Historical, Cultural and Archeological Resources (OAR 345-022-0090)**

*(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:*

*(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;*

*(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in 358.905(1)(c); and*

*(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).*

*(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

*(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

Response: Based on the analysis provided in the ASC, and in accordance with OAR 345-022-0090(2), the Council imposed Historic, Cultural, and Archeological Resources Conditions 1 through 7 on the site certificate to address the protection of historic,

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cultural, and archaeological resources at the facility site. The Certificate Holder will abide by these conditions in order to maintain compliance with the Council's Historic, Cultural, and Archeological Resources standard.

**6.1.12 Recreation (OAR 345-022-0100)**

*(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities in the analysis area as described in the project order. The Council shall consider the following factors in judging the importance of a recreational opportunity:*

*(a) Any special designation or management of the location;*

*(b) The degree of demand;*

*(c) Outstanding or unusual qualities;*

*(d) Availability or rareness;*

*(e) Irreplaceability or irretrievability of the opportunity.*

*(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

Response: With the implementation of Recreation Standard Conditions 1 and 2 and Public Services Condition 4, the Council found that construction traffic from the facility would not result in significant adverse impacts to Willow Creek Wildlife Area. Based on the analysis presented in the ASC, the Council found that the traffic generated by the construction and operation of the facility is not likely to result in significant adverse impacts to any of the other recreational opportunities identified as "important." The proposed change does not affect EFSC's previous findings of compliance with the

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Recreation Standard. No additional recreational opportunities have been identified that were not included and analyzed in the ASC. Because the construction and operation of the facility are not likely to result in significant visual impacts to important recreational opportunities, the facility is in compliance with the Council's Recreation standard.

**6.1.13 Public Services (OAR 345-022-0110)**

*(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.*

*(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

*(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

Response: The proposed change does not affect EFSC's previous findings of compliance with the Public Services. Accordingly, EFSC may rely on its earlier findings of compliance. Moreover, based on the analysis provided by the Certificate Holder in the ASC, and in compliance with OAR 345-022-0110(2), the Council included 15 Public Services conditions in the site certificate to address the Council's Public Services Standard. The facility will abide by these conditions in order to maintain compliance with the Council's Public Services Standard.

**6.1.14 Waste Minimization (OAR 345-022-0120)**



*(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:*

*(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;*

*(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.*

*(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

*(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.*

Response: The proposed change does not affect EFSC's previous findings of compliance with the Waste Minimization Standard. Accordingly, EFSC may rely on its earlier findings of compliance. Moreover, based on the analysis provided by the applicant in the ASC, and in compliance with OAR 345-022-0120(2), the Council included two Waste Minimization Conditions listed in the site certificate to address the Council's Waste Minimization Standard. The applicant will abide by these conditions to maintain compliance with the Council's Waste Minimization Standard.

## **6.2 Division 24 Standards**

### **6.2.1 Siting Standards for Transmission Lines (OAR 345-024-0090)**

*To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:*

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*(1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;*

*(2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.*

Response: Based upon their review of the Applicant's evaluation presented in Exhibit AA of the ASC, the Council found that the Applicant can design, construct and operate the transmission line so that induced currents would be as low as reasonably achievable. Subject to compliance with Siting Standards for Transmission Line Conditions 1 through 4, the Council found that the facility complies with the Council's Siting Standards for Transmission Lines. The proposed change does not affect EFSC's previous findings of compliance.

### **6.3 Other Applicable Regulatory Requirements**

#### **6.3.1 Noise Control Regulations (OAR 340-035-0035)**

*(1) Standards and Regulations:*

*(b) New Noise Sources:*

*(B) New Sources Located on Previously Unused Site:*

*(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).*

*(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all*

*noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.*

Response: Based on the findings presented in the ASC, the Council found that the facility would comply with the Noise Control Regulations in OAR 340-035-0035(1)(b)(B).

### **6.3.2 Removal-Fill**

*The Oregon Removal-Fill Law (ORS 196.795 through 196.990) and Department of State Lands (DSL) regulations (OAR 141-085-0500 through 141-085-0785) require a removal-fill permit if 50 cubic yards or more of material is removed, filled, or altered within any “waters of the state.”<sup>341</sup> The Council, in consultation with DSL, must determine whether a removal-fill permit is needed and if so, whether a removal-fill permit should be issued. The analysis area for wetlands and other waters of the state is the area within the site boundary.*

Response: Based on the facts and conclusions presented in the ASC, the Council found that a removal-fill permit is not needed for the facility.

### **6.3.3 Water Rights**

*Under ORS Chapters 537 and 540 and OAR Chapter 690, the Oregon Water Resources Department (OWRD) administers water rights for appropriation and use of the water resources of the state. Under OAR 345-022-0000(1)(b), the Council must determine whether the facility would comply with the statutes and administrative rules identified in the project order. The project order identifies OAR 690, Divisions 310 and 380 (Water Resources Department permitting requirements) as the administrative rules governing use of water resources and water rights as applicable to the facility. The project order also states that OAR 345-021-0010(1)(o) applies to the facility (except for provision (D), which is applicable only to thermal power plants). OAR 345-021-0010(1)(o)(F) requires that if a facility needs a groundwater permit, surface water permit, or water right transfer, that a decision on authorizing such a permit rests with the Council.*

Response: Based on the facts presented in the ASC, the Council concluded that the facility does not need a groundwater permit, surface water permit, or water rights transfer.

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## **7.0 Property Owners Located within or Adjacent to the Site of the Facility (OAR 345-027- 0360(1)(f))**

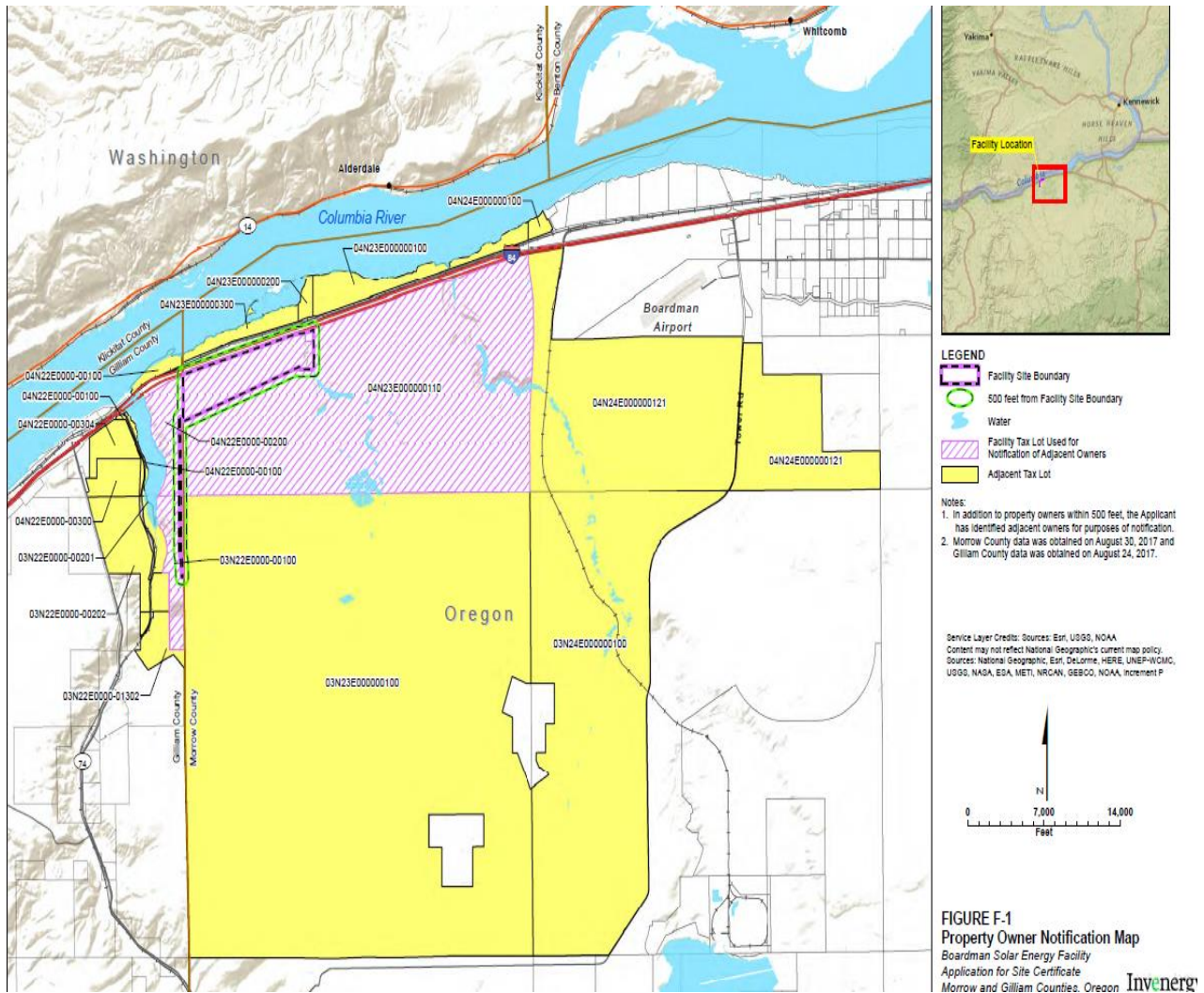
*(f) An updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f)*

Response: An updated property owner list and tax lot map required by OAR 345-027-0360(1)(f) are provided in Attachment 1 and Figure F-1.

## **8.0 Conclusion**

In sum, the extension request demonstrates that the proposed extensions to the construction start and completion deadlines comply with the applicable standards and will not violate any other Council standards or Site Certificate conditions. Boardman Solar Energy Facility therefore requests that the Council approve this amendment request and make the requested changes to the Site Certificate for the Facility.

Figure F-1: Map of Facility Boundary and Tax Lots



**Attachment 1: Updated Property Owner List**

Map Tax Lot	First Name	Last Name	Company/Organization	C/O Attn	Address	City	State	Zip Code
03N22E0000-00100			Baic Inc.	Martin Myers	75906 Threemile Road	Boardman	OR	97818
03N22E0000-00200			Baic Inc.	Threemile Canyon Farms LLC (DBA)	75906 Threemile Road	Boardman	OR	97818
03N23E000000100			Threemile Canyon Farm	Martin Myers	75906 Threemile Road	Boardman	OR	97818
04N23E000000110			Threemile Canyon Farm	Martin Myers	75906 Threemile Road	Boardman	OR	97818
03N22E0000-00201			USA					
03N22E0000-00202			Threemile Canyon Farms LLC		75906 Threemile Road	Boardman	OR	97818
03N22E0000-01302	Judith A.	Harris			76044 Sullivan Road	lone	OR	97843
04N22E0000-00100			USA					
04N22E0000-00300			WF Inc.		PO Box 1136	Newberg	OR	97123
04N22E0000-00304	Greg G.	Griffith			76768 HWY 74	lone	OR	97843
03N23E000000100			Threemile Canyon Farm	Martin Myers	75906 Threemile Road			
03N24E000000100			Threemile Canyon Farm	Martin Myers	75906 Threemile Road			
04N23E000000200			USA					
04N23E000000300			USA					
04N23E000000100			Threemile Canyon Farm	Martin Myers	75906 Threemile Road			
04N24E000000100			Threemile Canyon Farm	Martin Myers	75906 Threemile Road			
04N24E000000121			Inland Land Co. LLC.	Jensen, David R.				

Source: CoreLogic, Inc., Obtained December 10, 2020